

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

KIMBERLY KAY NELSON,)	CASE NO. 5:16CV2464
)	
Petitioner,)	JUDGE DONALD C. NUGENT
)	
v.)	MAGISTRATE JUDGE
)	
COMMISSIONER OF SOCIAL)	KATHLEEN B. BURKE
SECURITY ADMINISTRATION,)	
)	
Respondent.)	<u>MEMORANDUM OPINION</u>

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kathleen B. Burke (ECF #18). On October 7, 2016, Petitioner, Kimberly Kay Nelson, filed her Complaint (ECF #1) challenging the final decision of the Commissioner of Social Security denying her claim for Disability Insurance Benefits. Pursuant to Local Rule 72.2(b), the case was referred to Magistrate Judge Burke.

On July 19, 2017, the Magistrate Judge issued her Report and Recommendation. The Magistrate Judge found the Commissioner's decision denying Disability Insurance Benefits to be supported by substantial evidence and recommends that the Commissioner's decision be affirmed. Objections to the Report and Recommendation were to be filed within 14 days of service. Petitioner filed a response to the Report and Recommendation stating that she will not be filing any objections to the Report and Recommendation. (ECF # 19).

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable standard of review of a magistrate judge's report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case de novo. FED R. CIV. P. 72(b) states:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b)(3) addresses only the review of portions of reports to which timely objections have been made; it does not indicate the appropriate standard of review for portions of the report to which no objections have properly been made. The Advisory Committee on Civil Rules commented on the standard of review stating "when no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72 advisory committee's notes (citations omitted).

The U.S. Supreme Court stated: "It does not appear that Congress intended to require district court review of magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to these findings." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Here, Petitioner filed a response stating that she will not file objections to the Report and Recommendation. Accordingly, this Court reviews the Report and Recommendation for a finding of clear error on the face of the record.

Conclusion

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. The Report and Recommendation of Magistrate Judge Burke (ECF #18) is ADOPTED. The decision of the Commissioner denying Petitioner's request for Disability Insurance Benefits is AFFIRMED. Petitioner's request that the case be reversed and remanded (ECF #1) is DENIED.

IT IS SO ORDERED

Donald C. Nugent
DONALD C. NUGENT
United States District Court

DATED: October 2, 2017